

ALSAIDAT (Migration) [2018] AATA 3942 (13 August 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Amjad Ali Ahmad ALSAIDAT
CASE NUMBER:	1700502
DIBP REFERENCE(S):	BCC2015/1559635
MEMBER:	Russell Matheson
DATE:	13 August 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 13 August 2018 at 9:11am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – Spouse of the sponsor – marriage certificate – evidence of contribution to joint account – sponsor’s photo identification address – sponsor’s social media account – limited photographs of social events – inception of relationship – limited care of applicant’s children – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A, Schedule 2 cls 820.211, 820.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 21 December 2016 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant is a 36 year old male national of Jordan. He applied for the visa on 28 May 2015 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211 because the delegate was not satisfied he was the spouse of the sponsor. The applicant seeks review of the delegate's decision.
4. The applicant appeared before the Tribunal on 26 March 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and a witness Abdulla Falah Mohammad. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The Tribunal was adjourned on 22 March 2018 due to the sponsor being ill.
5. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the applicant is the spouse of the sponsor as defined in s.5F of the Act.
8. The Tribunal has before it the Department of Immigration's (the Department) file relating to the applicant; its own file; and a copy of the Department's decision provided by the applicant to the Tribunal.
9. The evidence the parties provided at the Tribunal hearing is recorded throughout this decision record.

Whether the parties are in a spouse or de facto relationship

10. Paragraph 820.211(2)(a) and cl. 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
11. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there

must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

12. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The applicant provided a copy of the marriage certificate registered in the state of New South Wales under the *Births Deaths and Marriages Registration Act 1995*. The marriage certificate indicates that the parties were married on 26 May 2015 at Lakemba. There is no evidence before the Tribunal to indicate that the marriage is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

13. In forming an opinion whether they are in a marital relationship and in considering whether they have a mutual commitment to a shared life as husband and wife to the exclusion of all others, whether their relationship is genuine and continuing, and whether they live together and not separately and apart on a permanent basis as defined in s.5F(2)(b)-(d), the Tribunal has regard to all the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the applicant's and sponsors household and their commitment to each other as set out in r.1.15A(3).
14. After careful consideration of all of the evidence before it, the Tribunal has reached the conclusion that it is not satisfied the applicant is the spouse of the sponsor within the meaning of s.5F of the Act. Below the Tribunal sets out its consideration of the evidence under the relevant aspects of matters it must take into consideration under r.1.15A(3), and the reasons for its decision.
15. The Tribunal had the benefit of the applicant's, the sponsor's and a witness' oral evidence at the hearing and found their evidence overall inconsistent and not credible. The Tribunal gave all the evidence provided by the parties and witness' at the Tribunal hearing and evidence provided to the Department in the primary application and Tribunal file due regard.
16. The Tribunal acknowledges the delegate's concerns set out in the primary decision record. The Tribunal discussed these with the applicant and the sponsor in the course of the hearing and the Tribunal is not satisfied that the parties are credible witnesses.

17. Financial aspects

18. The Tribunal has considered the financial aspects of the relationship including any joint ownership of real estate or major assets, any joint liabilities, the extent of any pooling or sharing of financial resources, whether any person in the relationship owes any legal obligation in respect of the other, and the basis of any sharing of day-to-day household expenses.
19. The parties stated that they have their own personal accounts and a joint account with the Commonwealth bank. The applicant said that the parties have no rules about who pays this or that. The applicant said that he buys things for the sponsor's daughters and that he gives the sponsor money when she requests it from him and that he also gives her cash to pay for

the electricity bill. The applicant said that he is paid \$1200 to \$1300 cash weekly and the sponsor receives Centrelink payments. The applicant said that he does not know how much the sponsor receives from Centrelink because he had never asked her. The parties stated that they both transfer money into the joint account for daily living expenses. The Tribunal accepts that the parties have a joint account in both names and that there are some transactions for daily living expenses. There is no evidence that the sponsor makes a contribution to the joint account for day-to-day living expenses. The Tribunal accepts that the applicant may give cash money at times to the sponsor and her daughters but there is little supportive evidence before the Tribunal to indicate that the applicant and sponsor share or pool their financial resources.

20. There is no evidence before the Tribunal that the parties have any joint ownership of real estate, major assets, joint liabilities or any one person in the relationship owes any legal obligation in respect of the other. The applicant has provided limited information regarding the financial aspects of the parties' relationship in relation to the pooling and sharing financial resources or sharing daily living expenses. Based on the evidence provided the Tribunal finds that the financial aspects of the relationship are not indicative of the parties being in a genuine spousal relationship.

21. Nature of the household

22. The Tribunal has considered the nature of the household including any joint responsibility for the care and support of children if any, living arrangements and daily routine of the parties and the sharing of the responsibility for housework.
23. The sponsor stated that she does the cleaning, cooking and shopping and the applicant watches her children. The Tribunal accepts that the sponsor does the cooking and the applicant minds the sponsor's children. The sponsor said that the applicant sometimes takes her children to KFC and McDonald's so they can play in the children's playground. The applicant said that he buys things for the sponsors children and gives her eldest daughter cash. Other than the applicant's and the sponsors oral evidence there is little corroborative evidence to show that the applicant supports and cares for the sponsor's children.
24. The applicant and the sponsor told the Tribunal there are no documents in joint names in relation to the household where they are living at Seven Hills and the applicant receives no mail at that address. The parties stated that they purchased some furniture together for the household but did not keep the receipts for household purchases. The parties other than their oral evidence provided little corroborative evidence of sharing the household duties or responsibilities. They also presented little supportive evidence of living together or not living separately and apart on a permanent basis.
25. The applicant told the Tribunal that everything is in the sponsors name and there are no documents in joint names such as a tenancy agreement because no one told him that he had to have documents in joint names. The Tribunal is of the view the onus is on the applicant to provide as much documentary evidence as possible to the Tribunal to establish that he is in a genuine spousal relationship. The applicant was represented by a registered migration agent and the Tribunal is of the view he would have advised the applicant to provide documentary evidence to establish that he was in a spousal relationship at the time he lodged his application. The Tribunal also notifies the applicant of the type of documentation required when lodging a partner visa application.
26. The applicant provided photo card identification to the hearing officer at the start of the Tribunal hearing on 22 March 2018 indicating that his residential address is Myra Road Dulwich Hill. The applicant also provided consent to release personal information document to the Administrative Appeals Tribunal for release of information to his agent dated 8

February 2018. The applicant's address on the consent form states his address as Myra Road Dulwich Hill. The Tribunal queried with the applicant why the photo card and consent form indicated that he was living at Myra Road Dulwich Hill. The applicant told the Tribunal that he had told his agent the address was wrong. Neither the applicant nor his agent provided any supportive evidence to the Tribunal to indicate that this had actually occurred. The Tribunal is of the view it is the personal responsibility for the applicant to provide the correct details when completing the consent to release personal information form. The applicant provided information to the Tribunal on 28 March 2018 that he had changed his photo identification card address to the sponsor's address at Bernice Street Seven Hills after the resumption of the adjourned hearing held on 22 March 2018. The applicant's evidence during the hearing is that he first moved to live with the sponsor at Bernice Street Seven Hills in July 2015. The Tribunal places no weight upon the applicant changing his address after the Tribunal hearing because it is of the view this was only done by the applicant to strengthen his case for the grant of the visa. Based on the evidence provided there is an absence of evidence to substantiate that the parties have ever lived together in the same household. The Tribunal finds that the applicant and sponsor do not live together.

27. The Tribunal queried if the sponsor was on social media and if she was on Facebook. The sponsor responded that she was and that she had stopped using Facebook about one year ago. The Tribunal told the sponsor that it had accessed her public postings on Facebook and there was a video link with a male person whom she tells that she is not in a relationship but she does have a Lebanese friend who visits. The applicant told the Tribunal this occurred when the parties were separated for six months and the Facebook site was established when they were separated. The sponsor told the Tribunal she was only joking in the video. The Tribunal asked the sponsor if she was linked to any other Facebook page. The sponsor said that she was not on Facebook for any other reasons, just games. The Tribunal produced to the sponsor a printout of a Helping Hands Go Fund Me Facebook page that was created by her on 1 May 2016. The Go Fund Me page created by the sponsor indicates that the sponsor was in a long-term relationship with another male (Mikael) whom she describes as the father of her three children and fiancé. She further states on the site created that the male person (her fiancé) tragically died and that she is struggling to raise her children on her own because of the loss of the finances that he used to bring to the household. The sponsor requests on the site that people make a donation to the site to help her and her children cope with the loss of her partner and the children's father. The sponsor stated that she created the Go Fund Me site to get extra money after her partner passed away 2 years ago. She further stated that he was not her fiancé. The Tribunal also presented evidence to the sponsor of another Facebook site created by a person named Sera Aimee describing the Facebook site as a funeral fund for the sponsor's partner (Mikael) who was tragically found deceased. The sponsor told the Tribunal that she had put on a big sob story to set up a fundraiser and that her friend had set up another Facebook site out of the goodness of her heart to help her and her children. She further stated that people set up Facebook sites to get cars, phones and funds for their children.
28. The Tribunal in accordance with s.359AA put to the applicant that the sponsor had established Facebook sites to raise funds for herself and her children and the funeral of her former partner. The Tribunal also put to the applicant the Facebook site indicates that the sponsor was in a relationship with another male. The applicant told the Tribunal that he had no idea that the sponsor had Facebook sites set up to raise funds for her former partner and that he and the sponsor were separated at the time. The applicant further stated that the sponsor has four Facebook sites and has one each for her children. He also said that the sponsor uses the sites for joking and fun and that he does not use Facebook himself. The Tribunal accepts that the applicant was not aware that the sponsor had "GoFundMe/Helping Hands" sites on Facebook because her evidence is that she did not tell him. Based on the information provided on the Facebook sites the Tribunal is of the view the sponsor was in a

relationship with another male person by the name of Mikael who is the biological father of her children.

29. The Tribunal finds based on the evidence before it there is little evidence to support that the applicant and sponsor are in a genuine and continuing spousal relationship. Based on the evidence provided the Tribunal finds that the parties do not live together and there is no sharing of the housework. Based on the evidence provided the Tribunal finds that the applicant provides little care and support for the applicants children.

30. **Social aspects**

31. The Tribunal considered the social aspects of the relationship, including whether the parties represent themselves to other people as being married to each other, the opinion of friends and acquaintances about the nature of the relationship, and any basis on which the parties plan and undertake social activities.
32. The parties stated that they lived apart for a period of time to give the impression to the sponsor's mother that they had separated. The parties' said that the sponsor's mother hates the applicant. The sponsor has five siblings and stated that the applicant has only ever met her sister Amy. The applicant has four siblings and the sponsor told the Tribunal that she does not know much about them other than they live in Jorden. There is little evidence of family support of the parties' relationship. The Tribunal queried if the applicant knew the date of birth of the sponsor's three children. The applicant in evidence was unable to give the correct date of birth for the sponsor's three children. The applicant became vague and evasive and further stated that the children say it's their birthday all the time. He further stated that he has a problem with dates and he does not even know his siblings or fathers date of birth. The applicant told the Tribunal that he thought a simpler question would be asked of him at the Tribunal hearing. The Tribunal does not accept the applicant's statement that he is not good with dates as he was able to remember the sponsor's date of birth during the hearing. The Tribunal is of the view if the applicant has genuinely been living with the sponsor and in a genuine relationship for over three years he would have some knowledge of the sponsor's children's birthdays.
33. The applicant told the Tribunal that the parties spend most of their time at home and have family barbeques together. The parties stated that they went to the beach at Brighton Le-Sands two weeks ago for a family day out. The applicant said that he does not go to social events with the sponsor. He further stated that the sponsor visits her friends and he visits his friends. The sponsor told the Tribunal that the parties went to a restaurant in Newtown a couple of years ago. There is little evidence before the Tribunal that the applicant and sponsor socialise together or represent themselves to other people as being married to each other.
34. The parties provided no additional photographs to the Tribunal to support the social aspects of their relationship. The parties provided limited photographs to support the social aspects of their relationship to the Department. The Tribunal accepts that the photographs indicate that the parties have been in each other's company. The Tribunal accepts that the parties have socialised on some occasions together. The applicant provided one Form 888 Statutory Declaration to the delegate attesting to the genuineness of the relationship and one additional Statutory Declaration to the Tribunal. The statements confirm that they have met the parties on limited occasions and know that the parties are married and believe the marriage is genuine. The Tribunal is of the view the statements do not provide any convincing reasons as to why they believe the relationship is genuine or provide any detail into the inception or development of the relationship. The parties presented a witness at the Tribunal hearing on 26 march 2018 who said that he owns a Jordanian food store in Newtown and that he has known the applicant for five years and the applicant introduced the

sponsor as his wife to him a year after they were married. The Tribunal places little weight on the statements provided or the evidence provided by the witness as they give no convincing reasons as to why they believe the relationship to be genuine.

35. The parties stated that they have not informed government agencies that they are in a marital relationship because they will cut the sponsor's Centrelink payments. Based on the evidence provided the parties are not representing themselves to government agencies as being in a spousal relationship.
36. Overall, on considering the evidence given by the applicant and sponsor the Tribunal does not find that the parties represent themselves to others as being in a committed spousal relationship or that they are regarded by other people as being in a genuine and continuing spousal relationship. The Tribunal accepts that they have planned and undertaken some joint social activities together in Australia. The Tribunal places little weight on this aspect of the relationship.

37. Commitment

38. The Tribunal has considered the nature of the parties' commitment to each other, including the duration of the relationship, the length and time the parties have lived together, the degree of companionship and emotional support they provide each other, and whether the parties view the relationship as a long-term one.
39. The parties state that they met in a nightclub at Darling Harbour on 5 July 2013 when the sponsor was seven months pregnant with her third child to another male person whom she had been in a de facto relationship with. The parties claim to have entered into a committed relationship on 14 February 2015 and were married on 26 May 2015. As the parties have provided a marriage certificate the Tribunal accepts that they are lawfully married. The parties claim to have been in a committed relationship for a period of time exceeding three years.
40. The applicant and sponsor have provided signed statements outlining how they first met and how the relationship developed. The parties both indicate that they see their relationship as a long-term one, however the accompanying evidence and oral evidence provided at the Tribunal hearing by the parties in relation to the nature of the household, financial, social, and commitment aspects of their relationship does not support this notion. The parties have not provided any evidence of mutual obligation, companionship, emotional support and long-term planning which are typical components of a marital relationship.
41. Whilst the Tribunal is satisfied the applicant and sponsor are legally married, there is insufficient evidence before the Tribunal that the parties see their relationship as a long-term one, that they draw emotional support and companionship from each other or that they have a commitment to a shared life together.

42. Findings

43. Based on the evidence provided by the parties the Tribunal finds that the parties do not pool or share their financial resources or share the daily expenses or that they have planned a financial future together. The Tribunal finds that there is no evidence of any joint ownership of real estate or other major assets or any joint liabilities or that one person in the relationship owes any legal obligation in respect of the other.
44. Based on the evidence provided there is limited evidence to show the parties established a joint household or shared the household responsibilities together. Based on the evidence provided by the parties, the Tribunal finds that the parties do not live together and share the

responsibility for housework. The Tribunal accepts that the applicant provided some care and support towards the applicant's children.

45. Based on the evidence provided by the parties the weight of the evidence does not support that the parties represent themselves to the wider community as being married to each other and that friends and acquaintances have a sound knowledge of the nature of the relationship. There is very little evidence before the Tribunal to indicate the relationship is socially recognised by family members, acquaintances or friends of the applicant or sponsor. There is little evidence that supports that the parties represent themselves to other people as being in a spousal relationship outside a select group of people. The Tribunal accepts on the evidence provided to the Tribunal that the parties have undertaken some social activities together.
46. Based on the evidence provided the Tribunal does not accept that the parties have been in a long-term relationship since July 2013. The Tribunal accepts that the parties have been legally married for nearly three years. Based on the evidence provided by the parties at the hearing, the Tribunal finds the evidence does not support that the parties live together or that they draw a degree of companionship or emotional support from each other that is indicative of being in a genuine spousal relationship or that they view their relationship as a long-term one.
47. Overall, having considered all the circumstances of the relationship, the Tribunal finds that the weight of evidence does not support a finding that the parties are in a genuine and continuing relationship. The Tribunal does not consider the financial, household, social or commitment aspects of the parties' relationship as being indicative of a couple with a genuine and mutual commitment to a shared life together.
48. Taking the above into account and considering all of the evidence cumulatively and holistically, the Tribunal is not satisfied the applicant and the sponsor have established that they are in a genuine and continuing relationship or have a mutual commitment to a shared life together to the exclusion of all others or that they are not living separately and apart on a permanent basis.
49. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2)(b)-(d) are met at the time the visa application was made and the time of this decision. There is no information before the Tribunal that the applicant would satisfy any of the alternate criteria for the grant of the visa.
50. Given these findings the Tribunal is not satisfied that at the time the visa application was made or the time of this decision the parties were in a spousal relationship.

DECISION

51. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Russell Matheson
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).